adherence to the doctrine of implied conditions in the law of contracts, prevails in Massachusetts and several other states. *Wells* v. *Calnan*, 107 Mass. 514; *Thompson* v. *Gould*, 20 Pick. (Mass.) 134; *Wilson* v. *Clark*, 60 N. H. 352. The purchaser, however, may assume the risk if such is the intention of the parties. And one writer, finding an indication of such intention in the fact of a transfer of possession to the purchaser, has ably argued that the loss should fall upon the party in possession of the premises at the time of the accident. See 9 HARV. L. REV. 106. The third view, as a result of the equitable doctrine of specific performance, puts the risk upon the purchaser from the moment that the contract is made. *Paine* v. *Meller*, 6 Ves. 349. From that moment equity treats the seller in many respects as a mortgagee or trustee holding the legal title merely as security for the price. He cannot convey a good title to any one having notice of the contract; his creditors cannot reach the land; it will pass under a devise of his trust estate; and he must use husbandlike care in its management. The buyer on the other hand is like a *cestui que trust* or mortgagor. His interest passes as real estate to his heirs or devisee; it is subject to his widow's dower; by recording the contract he can prevent his interest from being divested by any sale; he is chargeable with the costs of compulsory improvements; and any increase in the value of the premises accrues to his benefit. See 1 COL. L. REV. 1. In only one respect, apparently, does the analogy break down; the vendor does not have to account for the rents and profits. This is so because it is only just to allow him the use of the land until he is entitled to the use of the purchase money. From the making of the contract, therefore, the purchaser becomes practically the *dominus*. Equity has given him at once, as incident to the right of specific performance, substantially everything he bargained for. Justly, then, it would seem, it puts upon him the risk of accidental loss. This is the view generally accepted. *Paine* v. *Meller*, *supra*; *Brewer* v. *Herbert*, 30 Md. 301; see *Imperial, etc., Co.* v. *Dunham*, 117 Pa. St. 460, 477.

The acceptance of this view necessitates a decision opposed to that of the principal case. Such a result was reached in the only similar cases which have been found. *Stevenson* v. *Loehr*, 57 Ill. 509; *Kuhn* v. *Freeman*, 15 Kan. 423. It has even been held that though all the land be taken the purchaser must still pay. *Gammon* v. *Blaisdell*, 45 Kan. 221. But, as the equitable owner, he is entitled to whatever compensation is made. LEWIS, EM. DOM., § 319.

THE RESTRAINT OF LIBEL BY INJUNCTION. — For one hundred and fifty years there has existed a tradition having the force of absolute law that equity has no jurisdiction to enjoin a libel. The cases declaring such to be the law all refer to two decisions, *Huggonson's Case*, 2 Atk. 469 (1742), and *Gee* v. *Pritchard*, 2 Swanst. 402 (1818).

In the former a bill was filed to commit two defendants for having published a libel. Lord Hardwicke very properly adopted the ground that he could not punish them for libel, as the only relief was at law. It is to be noticed that the bill asked chancery to punish a past tort, not to restrain a future one. And the decision would have been the same had the offence been assault or trespass. The case of *Gee* v. *Pritchard*, *supra*, contains a *dictum* by Lord Eldon that equity will not restrain the pub-

lication of a libel, since such publication would be criminal, and equity cannot enjoin the commission of a crime. Furthermore in both cases the plaintiff succeeded on other grounds. It is also a significant fact that *Huggonson's Case* was decided sixty years before the courts of chancery under Lord Eldon's guidance gradually made use of their power to enjoin threatened trespasses.

Except for a *dictum* of Lord Ellenborough in *Du Bost* v. *Beresford*, 2 Camp. 511, the question seems to have lain dormant in England from this time until 1869, when Vice-Chancellor Malins granted a series of injunctions against libels. He based his decisions on the grounds that a man's right to carry on business is a property right, that the threatened publications would do irreparable mischief, and that the assessing of damages at common law would be inadequate and unsatisfactory relief. His authority was directly overruled, however, in 1875, by Lord Cairns in *Prudential Assurance Co.* v. *Knotts*, L. R. 10 Ch. App. 142. Since this time the English cases have been based on the Procedure and Judicature Acts of 1854 and 1873.

In the United States the law is in a confusing condition. Equity will not restrain a "mere" libel without some additional circumstances. *Boston Diatite Co.* v. *Florence, etc., Co.*, 114 Mass. 69; *Lewin* v. *Welsbach Light Co.*, 81 Fed. Rep. 904. But it is hard to state with definiteness what circumstances are sufficient to alter the decision. Where injunctions have been granted restraining boycotting and similar conduct by labor unions the argument appears to have been that irreparable damage would be done by libellous and intimidating acts. See *Vegelahn* v. *Guntner*, 167 Mass. 92; *Beck* v. *Teamsters', etc., Union*, 118 Mich. 497. In patent cases the granting of injunctions has depended either on the *mala fides* of the defendant, or on the fact that threats were contained in the publications. *Davison* v. *National Harrow Co.*, 103 Fed. Rep. 360; *Shoemaker* v. *South, etc., Co.*, 135 Ind. 471. Of course in all cases the plaintiff must show the probability of irreparable damage to his property or business. In New York, in spite of one decision to the contrary in an inferior court, the law seems to have been settled that equity has no jurisdiction in libel cases. *Brandreth* v. *Lance*, 8 Paige (N. Y.) 24; but see *Croft* v. *Richardson*, 59 How. Pr. (N. Y.) 356. The injunction granted by the appellate division of the Supreme Court in a recent case is therefore the more remarkable. *Marlin, etc., Co.* v. *Shields*, 68 N. Y. App. Div. 88. The defendant, a magazine editor, in order to force the plaintiff to advertise in his paper, wrote and published fictitious letters derogatory of the plaintiff's goods. The court in overruling a demurrer to the bill says, "It is therefore clear that . . . equity may . . . restrain the publication by injunction even though such publication embodies a libel upon the person; and all that seems necessary . . . is that the intended publication will work the destruction of property or inflict irreparable injury thereto." This is sound common sense. In theory there seems to be no reason why libels like other torts should not be restrained, provided other facts necessary to give equity jurisdiction are present. The great objection is that the powers of free speech are curtailed; but it is submitted the advantages of equitable jurisdiction in these cases far outweigh this disadvantage.